

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-198170

DATE: June 25, 1980

MATTER OF: Petty Officer Rodney J. Sharp, USN

DIGEST:

1. Navy member who reenlisted in 1977 after a 5-year break in service was assigned directly to duty in Hawaii and given rent-free Government housing there, but through error he was paid a basic allowance for quarters (BAQ) during the following year. He was furnished Leave and Earnings Statements which showed he was receiving BAQ and his application for waiver of the erroneous payments was therefore denied, notwithstanding his assertion that he did not understand the new-type pay statements, since his failure to make a reasonably prudent inquiry about his pay entitlements placed him at "fault" in the matter and barred his eligibility for consideration under the waiver law, 10 U.S.C. 2774 (1976).
2. Neither Navy member's exemplary conduct and duty performance, nor his circumstances of personal financial hardship, are factors which may properly be considered in determining whether he is without "fault" and therefore eligible for a waiver of the Government's claims against him arising out of erroneous payments of military pay and allowances under the statutory provisions of 10 U.S.C. 2774 (1976).

Petty Officer Rodney J. Sharp, United States Navy, 365-52-3693, requests reconsideration of our Claims Division's denial of his application for waiver of the claim of the United States against him for \$1,686.68, resulting from erroneous payments made to him of a basic allowance for quarters (BAQ) during the period from July 15, 1977, through May 30, 1978, when he and his family were residing in rent-free Government quarters. In view of the facts presented, and the applicable provisions of law, we sustain the Claims Division action.

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Under the pay and allowance system applicable to members of the uniformed services either Government living quarters are provided or BAQ is paid to them. A service member who is provided with suitable Government quarters for himself and his dependents "is not entitled to a basic allowance for quarters." 37 U.S.C. 403(b) (1976).

Petty Officer Sharp completed a term of enlistment in the Navy and was released from active service in 1972. He remained a civilian for the next 5 years until 1977, when he decided to reenlist. Because of his prior service, he was not required to take recruit training and was apparently assigned directly to shore duty at the Naval Communication Station at Wahiawa, Hawaii. He reported there on July 9, 1977, and moved into assigned Government family housing on July 15, 1977. Through administrative error, the local housing referral office failed to notify Petty Officer Sharp's disbursing office at Pearl Harbor about his occupancy of Government quarters. As a result, BAQ was mistakenly included in his pay and allowances. This mistake was eventually discovered on May 30, 1978, and it was subsequently determined that erroneous BAQ payments totalling \$1,686.68 had been made to him.

Petty Officer Sharp was then notified of the Government's resulting claim against him for recovery of the erroneous payments. By application dated June 12, 1978, he requested waiver of that claim. He essentially indicated that: he did not know he was being overpaid; he had been assured his pay was correct at his disbursing office; and collection action against him would cause his family to suffer severe financial hardship. The concerned Navy command authorities in Hawaii forwarded this application to the Navy Finance Center with an endorsement recommending waiver be granted. Those authorities indicated that Petty Officer Sharp's duty performance and conduct were exemplary and that in their opinion waiver of the Government's claim would be in the best interests of all concerned.

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However, Navy Finance Center officials recommended that waiver be denied when they sent the application to our Claims Division. In their opinion, Petty Officer Sharp should have been able to understand his Leave and Earnings Statements and realize he was erroneously receiving BAQ, and his failure to do so and take corrective action placed him in the position of being at least partially at fault in the matter. As indicated, our Claims Division denied the waiver application on July 20, 1979.

Petty Officer Sharp has since questioned the fairness of the action taken to deny his waiver application. In substance, he now says that because he was not required to take recruit training when he reenlisted in 1977, he did not receive any instruction concerning the Joint Uniform Military Pay System and computerized Leave and Earnings Statements, which had been introduced after the time he had been separated from the Navy in 1972. Consequently he was somewhat uncertain about his entitlements and did not understand how to read his pay statements. During the week of July 18, 1977, he checked in with his disbursing office at Pearl Harbor to ask for assistance. He asked if his pay was correct, and he was told by a clerk that it was. He also requested instructions on how to read his Leave and Earnings Statements, specifically questioning the entry concerning BAQ, and in return he received an explanation he did not understand. He again returned to the disbursing office in January 1978 after receiving a pay increase he did not know he was entitled to have, and he was again told that his pay had been correctly computed. He questions the fairness of our holding him responsible and at fault in these circumstances.

Subsection 2774(a) of title 10, United States Code (1976), provides in pertinent part that a claim against a member or former member of the uniformed services arising out of an erroneous payment of pay or allowances, the collection of which "would be against equity and good conscience and not in the best interest of the

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United States," may be waived in whole or in part. Subsection 2774(b) further provides that the Comptroller General or the Secretary concerned, as the case may be, may not exercise his authority to waive any claim:

"(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other person having an interest in obtaining a waiver of the claim * * *"

"Fault," as used in this subsection is considered to exist if it is determined that the member should have known that an error existed but failed to take action to have it corrected. 4 C.F.R. 91.5 (1980). Thus, if the member is furnished Leave and Earnings Statements which, if reviewed, would reveal the error, but he fails to review those statements for accuracy and otherwise fails to take corrective action, he is not without fault and waiver will be denied. See B-192380, November 8, 1978.

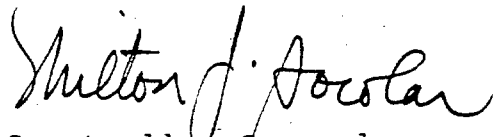
In the present case, it is our view that Petty Officer Sharp should have known that he could not properly receive BAQ after July 15, 1977, since a reasonably prudent service member is expected to know that he is not entitled to BAQ while living in Government quarters. Furthermore, we note that each time Petty Officer Sharp received a paycheck during the period from July 15, 1977, through May 30, 1978, he also received a Leave and Earnings Statement which plainly showed he was being credited with BAQ. Petty Officer Sharp does say that he asked a disbursing clerk about his pay statements, with specific reference to the entry concerning BAQ, and was given an explanation he did not fully understand. In our view, a reasonably prudent person in the circumstances would not have been satisfied with such an explanation. If in July 1977 Petty Officer Sharp had advised the concerned disbursing officials that he was residing in Government quarters, and had insisted that he be given an

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understandable explanation regarding his Leave and Earnings Statement and the BAQ entry it contained, the error would doubtless have been immediately detected and corrected. Since Petty Officer Sharp failed to make that reasonable inquiry, we consider him at least partially at fault in the matter, and are precluded by 10 U.S.C. 2774(b) from granting his application for waiver.

We recognize that Petty Officer Sharp's conduct and duty performance may be exemplary, and that recoupment of the overpayments may cause personal financial hardship; however, those are not factors that we may properly consider in determining whether he is without "fault" and eligible for a waiver under the provisions of 10 U.S.C. 2774. See B-192380, supra.

Accordingly, the action taken by our Claims Division in denying waiver in this case is sustained.



Acting Comptroller General
of the United States